

OGC HAS REVIEWED.

Approved For Release 2001/09/01 : CIA-RDP81-00314R000600010006-4

(C) by striking out "which is not--(1) in excess of 8

hours; or (2) overtime work is defined by section 5542(a) of this title".

(h) Section 5547 is amended to read as follows:

"An exempt employee paid under subchapter III, of chapter 53 or chapter 54 of this title may be paid premium pay under sections 5542, 5545(a)-(c), and 5546(a) and (b) of this title only to the extent that the payment does not cause the employee's aggregate rate of pay for any pay period to exceed the maximum rate for GS-15."

(i) Section 5548(b) is amended by striking out "sections" and inserting in lieu thereof "section" and by striking out "and 5550".

(j) Section 5550 is repealed.

(k) Section 5596 is amended in subsection (b)(1) by striking out "or reduction" and inserting in lieu thereof ", reduction or denial".

(l) Section 5941(b) is amended by inserting after "of this title" the following: ", or an employee whose pay is set in accordance with a locality pay schedule established under section 5305 of this title or a local Special Occupational Service pay schedule established under subchapter IX of chapter 53 of this title,".

(m) Chapter 59 is amended by adding at the end thereof the following new section:

✓ 23 "Sec. 5949. Staffing differentials"

24 "(a) For the purpose of this section, "employee" and "position"

25 include employees and positions under the statutory compensation systems

1 as defined in section 5301(c) of this title and (h) other compensation
2 systems as the Office of Personnel Management may prescribe; but not
3 under--

4 "(1) the Central Intelligence Agency;

5 "(2) the United States Postal Service; and

6 "(3) the Senior Executive Service as defined in section 2101a
7 of this title.

8 "(b) Upon determining that the Government is experiencing significant
9 difficulty in recruiting or retaining well-qualified individuals, the
10 Office may establish and thereafter, through periodic review, adjust or
11 abolish staffing differentials for one or more employees or positions,
12 as occupationally, organizationally, and geographically appropriate.

13 "(c) Under service agreements or such other procedures as the
14 Office shall prescribe, staffing differentials established under this
15 section may be paid in one or more lump-sums or in the same manner and
16 at the same time as basic pay.

17 "(d) Any differential paid under this section is in addition to
18 basic pay and is not an equivalent increase within the meaning of section 5335
19 of this title. The aggregate differential payable to any employee in
20 any twelve month period, when combined with the employee's annual rate
21 of basic pay may not exceed the annual rate of basic pay for GS-18 as
22 established under section 5305 of this title, without regard to section 5308
23 of this title.

24 "(e) The Office of Personnel Management shall prescribe regulations
25 to carry out the provisions of this section."

1. Proposed by [redacted] to [redacted] chapter:

2. Chapter 50 - Special Authority

Chapter 50 - Special Authority

3. "Sec. 5001. Premium pay and allowances special authority

4. "(a) For the purpose of this section, 'employee' means a civil
5. service employee in the executive branch of the Government of the
6. United States, except an employee of the United States Postal Service.

7. "(b) Notwithstanding any other provision of law, the President may
8. establish, modify, consolidate, or abolish Federal premium pay and
9. allowances provisions, except those relating to employment in foreign
10. areas, pertaining to an employee in order to eliminate conflicting or
11. contradictory requirements, provide for adjustment of Federal provisions
12. in light of the non-Federal sector practices and any special requirement
13. of the Federal service, or provide equitable premium compensation to all
14. Federal employees working under similar circumstances.

15. "(c) Action taken by the President to establish, modify, consolidate,
16. or abolish Federal premium pay and allowances provisions, except those
17. relating to employment in foreign areas, shall modify, supersede, or
18. render inapplicable, as appropriate, any provision of law or prior
19. action by the President under this section which is inconsistent with
20. the action taken by the President.

21. "(d) The President shall transmit a report to the Congress when he
22. takes action under this section."

23. (b) The table of chapters for part III of title 5, United States
24. Code, is amended by inserting before the item relating to chapter 51 the
25. following new item:

STATINTL

22 April 1979

KSW

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TO : [REDACTED] & LLM		REQUEST	
FROM : RJW via GMC MDC		SUSPENSE DATE	
SUBJECT: "Latest Revisions to Administration's Proposed Classification and Compensation Act of 1979"			
NOTES OMB recently forwarded their latest revisions to subject draft legislation. Per our recommendations, the Agency has been exempted from Section 5949. However, even though the "Compensation Agent" concept in Chapter 50 has been deleted, Chapter 50 as written still causes concern in that the President will have to designate someone to carry out his authority. As also explained in the letter, Chapter 50 is in conflict with Section 8 of the CIA Act. Accordingly, we are seeking a specific line exemption.			
COORDINATED WITH (list names as well as offices)			
NAME	[REDACTED]	OFFICE	OGC
NAME	[REDACTED]	OFFICE	OGC
NAME		OFFICE	
NAME		OFFICE	
ACTION REQUIRED BY XXX FPH			
Signature please			
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WASHINGTON, D.C. 20505

Legislative Counsel

OLC 79-0114/d

25 APR 1979

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

We have received a draft of the most recent changes to Section 5949 and the new Chapter 50 of the Administration's proposed "Classification and Compensation Act of 1979."

While we are pleased to note that cognizance has been taken of our position that the Central Intelligence Agency must be exempted from Section 5949, serious problems remain with regard to the scope and coverage of Chapter 50. On its face, elimination of the Compensation Agent from Chapter 50 would seem to rest the powers described in that Chapter in the President. If this were actually the case we would, of course, take no issue with the proposal. In practice, however, the President undoubtedly will designate an agent to recommend what premium pay and allowance provisions should be established, modified or abolished. It is also clear that this agent will in all likelihood be embodied within the Office of Personnel Management (OPM).

While employment in foreign areas is not covered in Chapter 50, many of CIA's premium pay and allowance provisions would be subject to the Chapter. Thus, the OPM in investigating such pay systems and allowances would, as we have noted previously, gain heretofore unauthorized access to sensitive CIA information and files.

Rather than repeat our previous comments on this subject, I would call to your attention paragraphs three through seven of my letter of 22 March 1979 (copy enclosed). The arguments contained therein, although directed toward the then-proposed Compensation Agent, are of equal applicability to the OPM. Our position on this matter is in conformity with President Carter's expressed desire to limit, indeed to reduce, the proliferation of access to sensitive intelligence information within the government.

The vesting of any authority over Central Intelligence Agency personnel matters in the OPM would create conflict of law problems. Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) gives the Director of Central Intelligence unfettered authority over the Agency's personnel systems. Diminution of this authority would have an inimical affect on the ability of the Agency to carry out its assigned mission and on the ability of the Director of Central Intelligence to fulfill his statutory responsibility for the protection of intelligence sources and methods. Therefore, we again recommend that the draft bill be amended as follows:

Amend Subsection 5001(a) by inserting after the phrase "United States Postal Service": "or an employee of the Central Intelligence Agency".

I would appreciate your advising us as to the intentions of your office regarding this proposed amendatory language.

Sincerely,

SIGNED


Legislative Counsel

STATINTL

Enclosure
As stated

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OLC:MDC:RJW:GMC:sf (23 April 1979)

WASHINGTON, D.C. 20503

Legislative Counsel

22 MAR 1979

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on the most recent draft of the "Classification and Compensation Act of 1979".

I am disappointed to note that the draft falls seriously short of reflecting the Agency's suggestions contained in my letter of 20 January 1979, and communicated in subsequent oral presentations made by members of my staff.

The importance of protecting intelligence sources and methods, and of preserving the flexibility required for the effective conduct of the Central Intelligence Agency's foreign intelligence functions were recognized by both the Administration and the Congress when the Agency was exempted from all of the major provisions of the Civil Service Reform Act of 1978. The same considerations should apply with regard to the Classification and Compensation Act of 1979.

Section 6 of the new draft would add a new Chapter 50 to Title 5 of the United States Code. Under Section 5001, the "Compensation Agent" and its staff would have access to information directly pertaining to intelligence sources and methods. The revisions now contained in the draft (exempting employment in foreign areas with regard to pension pay and allowances in Section 5001(b)) do not adequately meet our needs.

The draft, for example, would eliminate for purposes of the proposed Act the exemption to the rule making provisions of the Administrative Procedure Act contained in Section 553(a). This would result in the subjection of some of CIA's most sensitive material to various forms of public disclosure. Under subsection 553(c) of Title 5, for example, there could be public participation in Agency rule making related to matters covered by the Classification and Compensation Act; a result that would be diametrically opposed to the purposes of both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, and to the position consistently taken by this and previous Administrations on similar matters.

Under the provisions of the latest draft, the Compensation Agent and its staff would also possess, inappropriately in our view, the authority to make recommendations impacting upon the mission and substantive functions of the Central Intelligence Agency. In addition, it is implicit in the draft bill that the Office of Personnel Management's administration of modifications in pay systems or premium pay or allowance provisions under Section 5001 would require continuing access to information pertaining to intelligence sources and methods and could place OPM in the position of affecting substantive Central Intelligence Agency functions.

The Central Intelligence Agency must retain maximum flexibility to carry out its mission and functions successfully, a fact which has been reflected in Administration policy in areas such as those covered by the draft Classification and Compensation Act. The flexibility of the Director under 50 U.S.C. 403j to operate and adapt the Central Intelligence Agency's personnel system in order to meet the Agency's unique personnel requirements and the ever-shifting exigencies of intelligence collection and foreign affairs would be seriously impaired by Section 5001.

I strongly urge, therefore, acceptance of the following amendments:

1. Section 5001(a): Line 13 on page 40 of the March OMB draft should be amended as follows:

"...States, but does not mean an employee of the Central Intelligence Agency."


2. Section 5949(a) "Staffing Differentials:
Line 21 on page 32 should, for the same reasons
outlined above in connection with Section 5001(a),
be amended to read:

"...prescribe, but does not include
compensation systems of the Central Intelligence
Agency."

The opportunity to again comment on this draft bill is appreciated. We firmly believe that the amendments specified above must be made in order to prevent the erosion of key statutory authorities of the Director of Central Intelligence and to preserve the flexibility which is critical to successful accomplishment of the Central Intelligence Agency's mission. We stand ready to provide whatever further assistance may be necessary.

Sincerely,

SIGNED


Legislative Counsel

STATINTL

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Classification and Compensation Act

FROM:

Assistant Legislative Counsel

EXTENSION

6126

NO.

DATE

1 May 1979

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

1006 Area *

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Tom:

Per your request attached find latest version from OMB of subject legislation...proposed. It was with regard to this version that our latest views letter was sent and subsequently rejected by OMB.

We are grouping at 4 pm today to plan our next move. (SEE)

STATINTL

Assistant Legislative Counsel